

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
NO. 3:13-CV-196**

**U.S. COMMODITY FUTURES TRADING
COMMISSION,**

Plaintiff,

v.

JAMES HARVEY MASON,

Defendant, and

**THE JHM FOREX ONLY POOL (f/k/a
THE JHM FOREX ONLY POOL, LP), and
FOREX TRADING AT HOME,**

Relief Defendants.

**RECEIVER'S MOTION TO APPROVE
AMENDMENT TO SETTLEMENT AND
TO SHORTEN NOTICE**

Joseph W. Grier, III, the duly appointed receiver in this case (the "Receiver"), through counsel, hereby files this *Receiver's Motion to Approve Amendment to Settlement and to Shorten Notice* (this "Motion") seeking this Court's approval of an amendment (the "Amendment") to a settlement agreement (the "Settlement Agreement") reached with Stephen H. Gallagher and Lynn J. Gallagher, both individually and in their capacity as Trustees of The Gallagher Family Trust (the "Gallaghers") with respect to certain transfers. Specifically, while the original terms of the Settlement Agreement provided that the Gallaghers would pay the Receiver \$220,000.00 over the course of a year, the Gallaghers now desire to pay the Receiver the full \$220,000.00 immediately in exchange for a contemporaneous release from the injunction imposed by the *Consent Order Granting Preliminary Injunction and Pre-Judgment Attachment* entered on September 26, 2014 (the "Injunction") in the ancillary action *Grier v. Gallagher*, case number 3:14-cv-513. In addition, the Receiver seeks to shorten the normal 14-day objection

period on motions filed by the Receiver such that parties-in-interest shall have only five (5) days to respond to this Motion. In support thereof, the Receiver respectfully shows the Court as follows:

BACKGROUND

1. On December 15, 2014, the Court entered an Order (Doc. No. 134) approving the Settlement Agreement (the “Approval Order”).

2. The Settlement Agreement provides that the Gallaghers will transfer \$220,000.00, approximately 80% of their Net-Gain from Mason’s Ponzi Scheme, to the Receiver by making an immediate payment of \$105,000.00 and a second balloon payment in the amount of \$115,000.00 due on or before September 30, 2015.

3. The Settlement Agreement further provides that the Gallaghers will pledge their interest in certain real property and an annuity contract (the “Collateral”) as collateral for the \$115,000.00 payment due on September 30, 2015.

4. Since entry of the Approval Order, the Gallaghers now believe that they can liquidate and otherwise free-up addition assets in order to pay the Receiver the full \$220,000.00 due under the Settlement Agreement by the end of the year.

5. In exchange, the Gallaghers wish to lift the Injunction, which provides for a freeze of certain of the Gallaghers deposit accounts. In addition to immediately unfreezing the deposit accounts, there also would no longer be a need to burden the Collateral with security interests as provided in the original Settlement Agreement.

6. The Receiver and the Gallaghers have tentatively agreed on the Amendment described above, as set forth more fully in the writing attached hereto as Exhibit 1.

7. In addition to the foregoing, the Receiver also seeks to shorten notice on this

Motion, such that responses hereto shall be filed within five (5) days of the filing of this Motion.

RELIEF REQUESTED

8. The Receiver and the Gallaghers negotiated the Amendment at arms' length and the Receiver respectfully requests that the Court approve, and authorize the Receiver and the Gallaghers to consummate, the Amendment.

9. The Amendment, which facilitates an immediate payment of the full amount due under the Settlement Agreement, eliminates both: (a) the risk that the Gallaghers will fail to make the \$115,000 balloon payment on September 30, 2015; and (b) the costs inherent in perfecting security interests in the Collateral. An immediate payment in full also obviates the need for the Injunction. Therefore, the Amendment results in a much better bargain for the receivership estate than the original Settlement Agreement.

10. Given the obvious benefits to, and limited negative effect (if any) on, the receivership estate and considering that parties-in-interest receive accelerated electronic notification of motions filed by the Receiver either through email, publication on the Mason Receivership website or ECF, the Receiver seeks Court-approval of this Motion on shortened notice to ensure a full resolution of this matter by year-end.

11. In the opinion of the Receiver, the Settlement Agreement, as altered by the Amendment, reflects a fair, reasonable and adequate resolution with the Gallaghers.

NOTICE

12. If you do not want the Court to approve this Motion, or if you want the Court to consider your views, then on or before **December 26, 2014**, you or your attorney must file with the Court a written response explaining your position. The response must be filed electronically with the U.S. District Court for the Western District of North Carolina, www.ncwd.uscourts.gov.

Under certain circumstances, if you are an individual who is not represented by an attorney, you may hand deliver your response to the Clerk of the United States District Court, 401 West Trade Street, Charlotte, NC 28202. On or before the date stated above for filing your written response, you must also mail, fax or email a copy of your written response to Joseph W. Grier, III, Receiver, at 101 N. Tryon St., Ste. 1240, Charlotte, NC 28246 (mail), 704/332.0215 (fax), masonreceivership@grierlaw.com (email).

If the Court schedules a hearing, you or your attorney must attend the hearing, which will be held at a time and date which will be noticed only to any party who files a response, at the United States District Court, 401 West Trade Street, Charlotte, NC 28202. If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief the Receiver requests and may enter an order approving the Motion.

WHEREFORE, for the reasons outlined herein, the Receiver requests entry of an Order approving the Amendment upon shortened notice and granting such further relief as is just and proper.

Respectfully submitted, this 19th day of December, 2014.

/s/ Michael L. Martinez

Michael L. Martinez (State Bar No. 39885)

Grier Furr & Crisp, PA

101 North Tryon Street, Suite 1240

Charlotte, North Carolina 28246

Phone: 704.375.3720

Fax: 704.332.0215

mmartinez@grierlaw.com

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
NO. 3:13-CV-196**

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Relief Defendants.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that copies of the foregoing *Receiver's Motion to Approve Amendment to Settlement and to Shorten Notice* were served by electronic notification on those parties registered with the United States District Court, Western District of North Carolina electronic case filing system to receive notices for this case, unless otherwise noted.

Barry R. Blankfield (bblankfield@cftc.gov)
Joseph A Konizeski (jkonizeski@cftc.gov)
Jennifer E. Smiley (jsmiley@cftc.gov)
Commodity Futures Trading Commission

John A. Fagg, Jr. (johnfagg@mvalaw.com)
Frank E. Schall (frankschall@mvalaw.com)
Moore & Van Allen PLLC
Attorneys for James Harvey Mason

The JHM Forex Only Pool and
Forex Trading At Home
c/o James Harvey Mason
PID: 0000425831
P.O. Box 34429
Charlotte, NC 28234-4429
Via U.S. Mail

Customers
Via email and online publication

This is the 19th day of December, 2014.

/s/ Michael L. Martinez

Michael L. Martinez
Grier Furr & Crisp, PA
101 North Tryon Street, Suite 1240
Charlotte, NC 28246